1985

Arthur J. Barton v. Industrial Commission of Utah,, and River Ranches : Unknown

Utah Supreme Court

David L. Wilkinson; attorney general; K. L. McIff; Jackson, McIff and Mower; attorneys for defendants.
Virginius Dabney; Dabney & Dabney; attorneys for plaintiff.

20686

IN THE SUPREME COURT OF THE STATE OF UTAH

ARTHUR J. BARTON, Plaintiff, -vs- INDUSTRIAL COMMISSION OF UTAH, and RIVER RANCHES, a Limited Partnership (Uninsured Employer), Defendants,	:	Case No. 20686

PLAINTIFF'S BRIEF

ON WRIT OF REVIEW TO THE SUPREME COURT

OF THE STATE OF UTAH

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STATEMENT OF ISSUES PRESENTED ON APPEAL

The sole issue presented in this case is whether the Industrial Commission erred in dismissing Plaintiff's claim based upon a finding that the employer, a limited partnership, met the agricultural employer coverage exception found in Utah Code Annotated Section 35-1-42 (2) (b) (1983).

STATEMENTS OF FACTS

This case concerns a Writ of Review which is being taken from a denial of a Motion for Review by the Industrial Commission of Utah which affirmed the Order of an Administrative Law Judge dated March 22, 1985, wherein it was held that River Ranches, the uninsured employer, was an agricultural employer pursuant to Utah Code Annotated §35-1-42 (2) (b) (1983), and, therefore, excempt from coverage under the Act. Tr. 265, 274.

On April 17, 1984, Plaintiff, a 45-year-old male, was employed by River Ranches as a sheepherder. Tr. 36. On that date, while performing his normal duties as a sheepherder, Plaintiff was thrown to the ground by his horse. Tr. 37. As a result thereof, he sustained severe injuries to his right hip and leg. Tr. 38.

At the time of the hearing on March 18, 1985, the parties stipulated on the record that River Ranches was the employer and that it was a limited partnership at the time Plaintiff was injured. Tr. 28, 29, 36. In that partnership, Lloyd Johnson, Gerald Johnson and Burke Johnson are the general partners. Tr. 28. The limited partners are Lloyd Johnson's wife and their five

grandsons. Tr. 30, 264.

On the date of the industrial accident, River Ranches undeniably employed at least four persons "for the relevant period under consideration" as defined by the Act. Tr. 264. Furthermore, Burke Johnson, one of the general partners, testified that in addition to these four (4) employees, others, namely himself, Burke Johnson and Gerald Johnson, were also employed during the relevant time but he was unsure as to whether they worked for the 40 hours or more for a consecutive 13-week period as required by the statute. Tr. 71, 72. Moreover, he testified that another employee, Carlyle Bird, might also satisfy the work requirement of the Act. Tr. 68. Other than the uncertain and qualified testimony of Burke Johnson, these additional four people's work records were not made a part of the record.

The purpose of the limited partnership is to conduct a livestock and cropping operation. Tr. 66. Income earned by the limited partnership is split approximately 50/50 between the livestock and the cropping operation. Tr. 66, 264.

At the conclusion of Plaintiff's case, River Ranches declined to present any testimonial or documentary evidence to rebut Plaintiff's case. Tr. 74. Instead, Defendant moved for an order dismissing Plaintiff's claim. Tr. 74.

On March 22, 1985, the Administrative Law Judge entered his Findings of Fact, Conclusions of Law and Order dismissing Plaintiff's claim for benefits because "River Ranches is an agricultural employer" as defined by statute. Tr. 264-265. Plaintiff's Motion for Review was denied and the Administrative Law Judges'

order was affirmed by the Industrial Commission on April 24, 1985. Tr. 274.

SUMMARY OF ARGUMENT

Plaintiff contends that the Industrial Commission erred when it affirmed the Administrative Law Judge's Order dismissing Plaintiff's claim. Specifically, Plaintiff contends that the employer, a limited partnership, failed to produce any evidence to rebut the presumption of coverage and did not satisfy the rigid exclusionary requirements for Workers' Compensation coverage for agricultural employers contained in Utah Code Annotated, §35-1-42 (2) (b) (1983). Plaintiff further contends that the findings of the Industrial Commission are not supported by any substantial evidence in the record and, therefore, are arbitrary, improper, and contrary to law and should be reversed.

ARGUMENT

I

AN EMPLOYER IS PRESUMED TO HAVE SECURED WORKERS' COMPENSATION COVERAGE FOR THE BENEFIT OF ITS EMPLOYEES

The Utah Workers' Compensation Act specifically provides that all employers must secure compensation. Utah Code Annotated, Section 35-1-46 (1977) provides three ways by which an employer may satisfy this requirement. This section also provides means for the Commission to take affirmative steps against any employer who fails to provide compensation and force an employer to comply with the requirements of the Act. In addition, criminal liability lies against any employer who fails to comply with

the prescriptions of this section.

Utah Code Annotated, Section 35-1-46 (1977) and all other provisions of the Utah's Workers' Compensation Act, are in accord with the basic features of Workers' compensation, which have been succinctly described by Professor Larson as follows:

> [It] is a mechanism for providing cash-wage benefits and medical care to victims of work connected injuries, and for placing the cost of the injuries ultimately on the consumer, through the medium of insurance, whose premiums are passed on in the cost of the product. Larson's Workmen's Compensation Law, Vol. 1, §1, (1985).

The Utah Supreme Court recently restated the purpose of the Utah Workers' Compensation Act in State Tax Commission v. Industrial Commission, Utah, 685 P.2d 1051 (1984) where the Court affirmed an award to an employee who sustained injuries in an automobile accident while she was on a special errand for her employer. The Court stated:

> The purpose of the Workers' Compensation Act is to protect employees who sustained injuries arising out of their employment by affording financial security during the resulting period of disability. Id. at 1053.

See also State Tax Commission v. Department of Finance, Utah, 576 P.2d 1297 (1978); Buhler v. Gossner, Utah, 530 P.2d 803 (1975); and Wilstead v. Industrial Commission, Utah, 407 P.2d 692 (1965).

When looking at the stated purpose of Workers' Compensation and the prescription of Section 35-1-46, it becomes clear that there arises a presumption of workers' compensation coverage. Utah Code Annotated §35-1-42 (2) (b) (1983) specifically provides that "every person, firm and private corporation" are employers

subject to the provisions of the Act. Without such a presumption, the generally acknowledged purpose of workers' compensation as expressed by this Court would be defeated. Furthermore, the strict requirements placed upon an employer, and the powers conferred upon the Commission by Section 35-1-46, would be absolutely meaningless and merely an empty expression of legislative hope were the Act to be construed in any other manner.

Plaintiff acknowledges that the legislature has provided means whereby this presumption may be rebutted by an employer; however, it is submitted in the instant case that the employer has failed to present sufficient evidence to rebut the presumption of coverage applicable here. Hence, the employer should have provided for coverage in accordance with the terms and intent of the law.

II

AN EMPLOYER WHO CLAIMS TO FIT WITHIN THE PARAMETERS OF THE STATUTORY EXEMPTION FOR COVERAGE CONTAINED IN THE ACT HAS THE BURDEN OF PROOF CONCERNING THE APPLICABILITY OF THE EXEMPTION

Utah Code Annotated, Section 35-1-42 (2) (b) (1983) provides in material part for an exemption to the general rule of coverage for certain agricultural employers as follows:

> Every person, firm and private corporation [constitute employers subject to the provision of this title] except agricultural employers who employ five or fewer persons other than immediate family members for 40 hours or more per week each employee for 13 consecutive weeks during any part of the preceding 12 months (emphasis added).

This section provides for an exception to the general requirement that an employer provide workers' compensation coverage for the benefit of his employees. Furthermore, this section, if its applicability is proven by sufficient evidence, provides a means to rebut the presumption of coverage. However, the burden of proof that the exemption is met rests squarely upon the employer who is attempting to escape the responsibility for injuries sustained by an employee during the course of his employment.

Another way to view this exception would be to look upon it as an affirmative defense to a claim for compensation made by an injured employee. Rule 8(c) of the Utah Rules of Civil Procedure requires a party to set forth any affirmative defenses when responding to a preceding pleading. Moreover, the party which sets forth such an affirmative defense must bear the burden of proof. Wagstaff v. Remco, Inc., Utah, 540 P.2d 931, 934 (1975).

When applying this allocation of the burden of proof to the present case it becomes apparent that the employer did timely raise the affirmative defense. Tr. 16. However, and most importantly, the employer failed to carry its burden of proof. Burke Johnson, one of the employer's general partners, testified that in addition to the Plaintiff, three other persons (not related to any of the partners) met the requirements of Section 35-1-42(2)(b). Tr. 67-68, 265. In addition, Mr. Johnson testified that three other individuals also satisfied the time requirements, but he was unsure as to the specifics of their work records. Tr. 72. This testimony was given during the Plaintiff's prima facie case. The employer further testified that another

employee might also satisfy the time requirement. Tr. 68. Nonetheless, the employer failed to offer any testimony or documentation to rebut any of the testimony given during Plaintiff's case and failed to conclusively establish that these other persons did not in fact also work the minimal period referred to in the Act. Defendant merely presented a large number of exhibits which supported the testimony given during the Plaintiff's case.

Therefore, it is hereby submitted that Defendant failed to carry the burden of proving that Section 35-1-42(2)(b) excludes it from the requirements of the Workers' Compensation Act.

III

THE PARTNERSHIP IS A SEPARATE EMPLOYING LEGAL ENTITY

The Utah State Legislature, by enacting Utah Code Annotated, Section 48-2-1 (1953, as amended) et seq. as part of the Utah Code, has long recognized the existence of a limited partnership as a separate entity. Palle v. Industrial Commission, Utah, 7 P.2d 284, 287-288 (1932). Professor Larson in his treatise on Workers' Compensation Law, Section 54.31 (1982) acknowledges and recognizes the separate entity issue and the obstacles presented thereby.

> The impact of the no-entity problem has been confined almost entirely to the type of case in which a partner is the claimant, for it is in such cases that the almost inseparate conceptual obstacle is encountered of having the same person appear as employer and employee. But when this employer-employee merger is not involved, the courts have usually managed to get around the entity difficulty. To do this, it is only necessary to say that the intention of compensation legislation was to treat the partnership as an entity in order to effectuate its beneficient purposes. Id.

Applying Professor Larson's reasoning to the present case, it becomes obvious that the conceptual obstacle of the employer-employee merger does not exist here. The uncontroverted facts support the conclusion that Plaintiff was employed by River Ranches, a limited partnership, at the time he sustained his industrial injury. Tr. 18, 265. The testimony given during Plaintiff's prima facie case also established that Plaintiff was not a partner in River Ranches. Tr. 28, 30, 264. Based upon these facts, this Court should not have any difficulty in treating River Ranches, a limited partnership, as a separate employing entity for the purpose of awarding benefits to him.

IV

THE EMPLOYER DID NOT SATISFY THE EXEMPTION REQUIREMENTS CONTAINED IN UTAH CODE ANNOTATED SECTION 35-1-42 (1983)

Utah Code Annotated, Section 35-1-42 (2) (1983) provides that every person, firm and private corporation shall constitute employers subject to the Utah Workers' Compensation Act

> ... except agricultural employers who meet any one of the following conditions: (a) whose employees are all members of the immediate family of the employer, which employer has a proprietary interest in the farm; provided that the inclusion of any immediate family member under the provisions of this title is at the option of the employer or (b) who employ five or fewer persons other than immediate family members for 40 hours or more per week per each employee for 13 consecutive weeks during any part of the preceding 12 months.

When Plaintiff's claim was dismissed by the Administrative Law Judge, that dismissal was based upon the finding that the employer was "an agricultural employer as defined by Section 35-1-42". Tr. 265. Because sub-section (a) requires that all employees be members of the immediate family, and River Ranches employed individuals who were clearly not related to the Johnson families, the employer claimed that it met sub-section (b) only and not sub-section (a). It is hereby submitted, however, that in any event such a finding is not supported in the record.

First, as a separate entity, River Ranches cannot have an "immediate family member". It is a thing, an inanimate entity incapable of procreation. It would be an unacceptable stretch of the everyday meaning of the term "immediate family member" to suggest that a limited partnership could have a spouse or a child. Though not applicable to this case, Utah Code Annotated, Section 7-9-3(4) (1983) defines that term to mean "parents, spouse, surviving spouse, children ...." See also Bogart v. Deseret News Publishing Co., Utah, 233 P.2d 355, 357 (1951) where this Court held that an adult son, who maintained his own household and did not depend on his father for support, was not considered to be an immediate family member of the father. Therefore, the Johnson general and limited partners cannot be considered "immediate family members" such as would exclude them from the computation of the number of the employees of the employer.

Second, it is undisputed that River Ranches employed four persons who unquestionably satisfied the work period contained in the Act. Tr. 264. In addition, Burke Johnson testified that

three other persons, and perhaps a fourth person, also satisfied said time condition. Tr. 68-72. Since none of the testimony relating to the persons employed was controverted at the time of the hearing, it is obvious that the Commission's Order was in error and must be reversed. The record, therefore, contains uncontroverted testimony that River Ranches employed seven, and perhaps eight, persons who satisfied the relevant period of time under consideration.

And third, the generally recognized rule of law that a partner cannot be classified as an employee of his partnership for Workers' Compensation purposes was designed to apply in cases only where there is a merger, i.e., the employer and the injured employee are the same person. 81 Am Jur.2d, "Workmen's Compensation", Section 176 (Supp. 1984-1985). This is, however, an exception to the general rule. One such exception involves "working partners" who receive wages in addition to a share of the profits, and their wages are included in the payroll. Larson, supra at Section 54.30. 81 Am. Jur.2d, supra. This exception most clearly applies to the three partners who work for River Ranches. Tr. 71.

V

GIVEN THE LIBERAL INTERPRETATION TO BE AFFORDED TO THE UTAH WORKERS' COMPENSATION ACT, ANY DOUBT CONCERNING THE INDUSTRIAL COMMISSION'S ORDER MUST BE RESOLVED IN FAVOR OF PLAINTIFF

One of the overriding principles which must govern adjudication of Workers' Compensation claims is that such claims are to be liberally construed in favor of awarding benefits, and any doubts raised must be resolved in favor of the injured worker.

Prows v. Industrial Commission, Utah, 610 P.2d 1362, 1363-1364 (1980), citing Chandler v. Industrial Commission, 55 Utah 213, 184 P. 1020, 1021-1022 (1919). The Church of Jesus Christ of Latter-Day Saints v. Industrial Commission, Utah, 590 P.2d 328, 332 (1979) (dissenting opinion). McPhie v. Industrial Commission, Utah, 567 P.2d 153, 155 (1977). Askren v. Industrial Commission, 15 Utah 2d 275, 391 P.2d 302, 304 (1969). M & K Corporation v. Industrial Commission, 112 Utah 488, 189 P.2d 132, 134 (1948). Plaintiff respectfully requests all doubt concerning the applicability of the Workers' Compensation Act to River Ranches be resolved in such a way as to be consistent with the remedial nature of Workers' Compensation finding the mandatory coverage of the Act applicable to it.

CONCLUSION

The Commission in this case has incorrectly held that the employer, a limited partnership, has satisfied the conditions of Utah Code Annotated, Section 35-1-42 (2) (b) (1983) which in certain limited cases exempts an agricultural employer from the requirements of the Workers' Compensation Act. This exemption is contrary to the general purpose of this Act and hence, an employer seeking the benefits of the exemption must come forth with sufficient evidence to clearly establish the applicability of the exemption. River Ranches, however, has failed to present sufficient evidence to support its assertion that the exemption applies in this case.

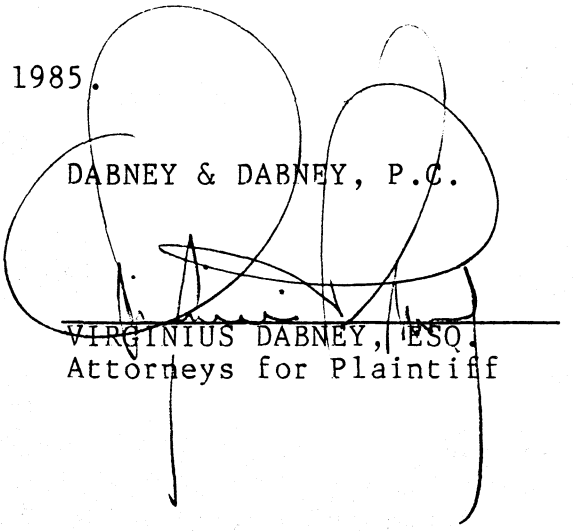
Nonetheless, the Commission, in dismissing the Plaintiff's claim, found that all partners of River Ranches are related to

Lloyd Johnson, and further found that River Ranches employed only four persons other than immediate family members. Tr. 265, 274. These findings, however, can only be based on the erroneous conclusion that Lloyd Johnson was the employer when, in fact, Plaintiff has demonstrated beyond any doubt that River Ranches was the employer of which Lloyd Johnson was merely a general partner.

Plaintiff has also cited the renowned Professor Larson, and cases of this Court, who has recognized that for purposes of Workers' Compensation a partnership is a separate entity. In fact, Professor Larson has reported in his treatise that courts uniformly hold that a partnership is a separate entity when a claimant is not related to any partner. Once this general rule is accepted, it becomes obvious that River Ranches can never satisfy the requirements of Utah Code Annotated, Section 35-1-42 (2) (b) (1983) for at least two reasons: first, an entity is incapable of having "immediate family members"; and second, Plaintiff in his prima facie case introduced testimony that at least seven, and possibly eight, persons satisfied the minimum work requirements of the section in any event.

As this Court has said in State Tax Commission, supra, and the cases cited therein and many other cases, the Utah Workers' Compensation Act was intended to protect employees who sustain injuries arising out of their employment. With this intent in mind, the Industrial Commission's Order dismissing Plaintiff's claim in this case must be reversed and remanded for analysis of the medical and damages aspects of his claim.

DATED this 19th day of August, 1985.



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VIRGINIUS DABNEY, ESQ.
Attorneys for Plaintiff

ADDENDUM

Utah Code Annotated Section 35-1-42(2) (1983)

[Employer Coverage Exception Defined]

The following shall constitute employers subject to the provisions of this title:

(1) The state, and each county, city, town and school district in the state.

(2) Every person, firm and private corporation, including every public utility, having in service one or more workmen or operatives regularly employed in the same business, or in or about the same establishment, under any contract of hire, express or implied, oral or written, except agricultural employers who meet any one of the following conditions: (a) whose employees are all members of the immediate family of the employer, which employer has a proprietary interest in the farm; provided that the inclusion of any immediate family member under the provisions of this title is at the option of the employer or (b) who employ five or fewer persons other than immediate family members for 40 hours or more per week per each employee for 13 consecutive weeks during any part of the preceding 12 months; and except domestic employers who do not employ one employee or more than one employee at least 40 hours per week; provided, that employers of agricultural laborers and domestic servants, shall have the right to come under the terms of this title by complying with the provisions thereof and the rules and regulations of the commission.

The term "regularly" as herein used shall include all employers in the usual course of the trade, business, provision or occupation of the employer, whether continuous through the year or for only a portion of the year.

THE INDUSTRIAL COMMISSION OF UTAH

Case No. 8500019

ARTHUR J. BARTON, Applicant, vs. RIVER RANCHES (Uninsured) Defendants.	*	FINDINGS OF FACT CONCLUSIONS OF LAW AND ORDER

HEARING: Hearing Room 334, Industrial Commission of Utah, 160 East 300 South, Salt Lake City, Utah, on March 18, 1985 at 10:00 o'clock a.m. Said hearing was pursuant to Order and Notice of the Commission.

BEFORE: Timothy C. Allen, Administrative Law Judge.

APPEARANCES: The applicant was present and represented by Virginius Dabney, Attorney at Law.

Defendant was present and represented by K. L. McIff, Attorney at Law.

At the Conclusion of the evidentiary hearing, the defendant, by and through counsel, made a motion to dismiss the application for hearing, for the reason that the defendant was a agricultural employer pursuant to Section 35-1-42 (b), Utah Code Annotated. The motion was taken under advisement by the Administrative Law Judge. Being fully advised in the premises, the Administrative Law Judge is prepared to enter the following.

FINDINGS OF FACT:

This case concerns whether or not River Ranches, is an agricultural employer as provided in Section 35-1-42 (b), Utah Code Annotated.

River Ranches, is a limited partnership, which was formed by Lloyd Johnson. Mr. Johnson being the father of his two general partners and sons, Gerald Johnson and Burt Johnson. In turn, the limited partners of River Ranches consist of Lloyd Johnson's wife, Melva, and his five grandsons. River Ranches, consists of the Lost Creek Farm which is a feed and sheepherding business. Approximately 50% of the income is derived from the growing of cattle feed, and other of their income is derived from sheepherding. The applicant herein, Arthur Barton, commenced employment with River Ranches as a sheepherder in March of 1984. At that time, there were two other sheep

herders working for River Ranches, Mark Barton, the applicant's brother, and Cameron Connor. In addition, Richard Boyack worked in the shed, thereby making a total of four employees. In reviewing the extensive records submitted by the defendant, the Administrative Law Judge finds that on April 17, 1984 there were a total of four employees other than immediate members of the family working for River Ranches, with the applicant being one of that four.

The pertinent statutory provisions, in Section 35-1-42, which provides in Subsection (2): "every person, firm and private corporation,... except agricultural employers... (b) who employ five or fewer persons other than immediate family members for forty hours or more per week per each employee for 13 consecutive weeks during any part of the proceeding twelve months;.. " Employing the plain meaning and reading of the statute, I find that the general partners and the limited partners of River Ranches are all members of Mr. Lloyd Johnson's immediate family. Further, I find that River Ranches employed four persons other than immediate family members for the relevant period under consideration, and accordingly they are an agricultural employer as defined by Section 42 of the Act, and as such are not required to have wokers' compensation insurance coverage.

CONCLUSION OF LAW:

River Ranches is an agricultural employer pursuant to Section 35-1-42 (2) (b), Utah Code Annotated.

ORDER:

IT IS THEREFORE ORDERED that the claim of Arthur J. Barton should be, and the same is hereby dismissed for the reason that his employer, River Ranches, is an agricultural employer as defined in Section 35-1-42, and as such is not required to have workers' compensation insurance.

IT IS FURTHER ORDERED that any Motion for Review of the foregoing shall be filed in writing within fifteen (15) days of the date hereof specifying in detail the particular errors and objections, and unless so filed this Order shall be final and not subject to review or appeal.

Timothy C. Allen
Administrative Law Judge

Passed by the Industrial Commission
of Utah, Salt Lake City, Utah, this
22 day of March, 1985
ATTEST:

/s/ Linda J. Strasburg
Linda J. Strasburg
Commission Secretary

CERTIFICATE OF MAILING

I certify that on March 22, 1985 a copy of the attached Finding of Fact Conclusion of Law and Order was mailed to the following persons at the following addresses, postage paid:

Arthur J. Barton, 305 North 400 West, Salina, Utah 84654

Virginius Dabney, Attorney, 412 Kearns Building, Salt Lake City, Utah 84101

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River Ranches, Aurora, Utah 84620

By Barbara

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THE INDUSTRIAL COMMISSION OF THE STATE OF UTAH

DIVISION OF WORKERS' COMPENSATION AND OCCUPATIONAL DISEASE AND DISABILITY

ARTHUR J. BARTON, Applicant, -vs- RIVER RANCHES [Uninsured Employer], Defendant,	:	MOTION FOR REVIEW Case No. 8500019

COMES NOW Applicant, pursuant to the Utah Rule of Civil Procedure and the Rule of the Industrial Commission of Utah, inter alia, and moves the Commission for an Order reversing the decision of the Administrative Law Judge dated March 22, 1985 wherein he held that the uninsured Defendant was an agricultural employer within the meaning of Utah Code Annotated §35-1-42 (2) (b) (1983). A Memorandum in Support will be filed on or before Friday, April 19, 1985.

DATED this 4th day of April, 1985.

DABNEY & DABNEY, P.C.

VIRGINIUS DABNEY, ESQ.
Attorneys for Applicant

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the foregoing document was mailed, postage pre-paid, on this the 4th day of April, 1985 to the following:

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THE INDUSTRIAL COMMISSION OF THE STATE OF UTAH

DIVISION OF WORKERS' COMPENSATION AND OCCUPATIONAL DISEASE AND DISABILITY

ARTHUR J. BARTON, Applicant, -vs- RIVER RANCHES [Uninsured Employer], Defendant.	MEMORANDUM IN SUPPORT OF MOTION FOR REVIEW Case No. 8500019

On March 22, 1985 the Administrative Law Judge denied the claim of Arthur J. Barton for the reason that his employer was exempt from the workers' compensation statutory scheme as an agricultural employer pursuant to U.C.A. §35-1-42 (1983). The employer was a limited partnership consisting of Floyd Johnson, his wife, two sons and five grandsons. River Ranches, a limited partnership was the employer of the Claimant. The Utah Supreme Court has recognized the general rule that a partnership is a separate entity. Palle v. Industrial Commission, Utah, 7 P.2d 284, 287-288 (1932). Professor Larson in his treatise, Workmens' Compensation Law, §54.31 (Supp. 1984-1985), recognizes the problem of the separate entity issue when partnerships are involved in workers' compensation claims. However, Professor Larson notes that this problem is "... confined to the type of case in which a partner ... is the claimant [and] it is in such cases that the almost insuperable conceptual

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obstacle is encountered of having the same person appear as employer and employee." Id. However, when the employer/employee merger is not involved, Professor Larson points out that the courts have no difficulty in treating the partnership as an entity to effectuate the general beneficient purpose of workers' compensation legislation:

> A fortiori, when the Claimant is simply an employee of the partnership unrelated to any partner, courts have uniformly held that the partnership is a separate employing entity. Id.

Therefore, the general rule is that, for purpose of workers' compensation, a partnership is a separate employing entity.

And, furthermore, an entity, such as a partnership or corporation, can have neither a spouse nor an "immediate family member" - only a person can have those familial relationships. Because River Ranches, a limited partnership, was the Employer of Claimant, it cannot as a matter of law have any relations. Though the general and limited partners were all related to each other, none of them were or could be related to the Employer.

The general law recognized by most jurisdictions is that a partner cannot be classified as an employee of his partnership for workmen's compensation purposes. The conceptual obstacle which is encountered, as described above, is that the same person assumes the role of employer and employee. Id. A partner cannot be both employer and employee of his firm. 81 Am. Jur. 2d, "Workmen's Compensation", §176 (Supp. 1984-1985). However, there are exceptions to this general rule.

The primary exception to the general rule involves "working partners" who receive wages in addition to a share of the profits, and their wages are included in the payroll. Workmens' Compensation, supra at §54.30. 81 Am. Jur. 2d, supra.

Hence, if the limited partners of River Ranches contributed their services to the partnership and received compensation for those services, then they, arguably were employees of the partnership. In Leventhal v. Atlantic Rainbow Painting Co., 172 A.2d 710, 712 (1961), the Court recognized that a statutory limited partnership is an entity separate and apart from its partners. As such, the limited partnership acting through its manager, could have a family member counted as an ordinary employee.

It is submitted that the Defendant, River Ranches, failed to present sufficient evidence which supports the Administrative Law Judge's conclusion that River Ranches is entitled to the agricultural employer exemption defined in the statute. Because River Ranches admitted that four of its employees who were also not related to the Johnson family, worked more than the time provided by statute, and, in addition and significantly, also admitted that various Johnson family members also worked at River Ranches and received remuneration over the applicable period of time, it is respectfully submitted that the Employer did not satisfy its burden of proof in establishing that it did not employ 6 or fewer people for the minimum periods provided by statute. The testimony given by Mr. Johnson at the hearing clearly established the possibility of six or more workers as having worked during the applicable period and for the periods of time provided for in the statute, all of which renders River Ranches an Employer within the meaning of the Workers' Compensation Statutes.

It is also significant to note that River Ranches failed to introduce any testimony or documentary evidence in its case in chief to support its position that the exemption to the statute applied to River Ranches. Exemptions to mandatory statutory coverage are always strictly construed against those claiming the exemption, because of the remedial nature of workers'

compensation legislation. As a result, River Ranches clearly bore the burden of proof of establishing the applicability of the exemption to it in this case, and because of the open-ended nature of Mr. Johnson's testimony, failed to sustain that burden.

Rule 8(c) of the Utah Rules of Civil Procedure requires that a party set forth any affirmative defenses when responding to a preceding pleading. The party raising an affirmative defense bear the burden of proof. Wagstaff v. Remco, Inc., Utah, 540 P.2d 931, 934 (1975).

River Ranches failed to present sufficient evidence at the hearing to support its position that it was entitled to the exemption of Section 42.

CONCLUSION

The uncontroverted facts are that River Ranches is a limited partnership, and that it was the employer of Claimant at the time he sustained his industrial injury. As a limited partnership, it cannot have a spouse nor immediate family member and therefore cannot be identified as an agricultural employer within the meaning of the Workers' Compensation exemption set forth in Section 42. And finally, it is also submitted that River Ranches failed to meets its burden of proof in that regard as well.

DATED this 24th day of April, 1985.

DABNEY & DABNEY, P.C.

VIRGINIUS DABNEY, ESQ.
Attorneys for Applicant

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the foregoing document was mailed, postage pre-paid, on this the 24th day of April, 1985 to the

following:

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THE INDUSTRIAL COMMISSION OF UTAH

Case No. 8500019

ARTHUR J. BARTON, Applicant, vs. RIVER RANCHES, (UNINSURED) Defendants.	*	DENIAL OF MOTION FOR REVIEW

On or about March 22, 1985, an Order was entered by an Administrative Law Judge of the Commission wherein benefits were denied in the above entitled case.

On or about April 4, 1985, the Commission received a Motion for Review from the Applicant by and through his attorney.

Thereafter, the matter was referred to the entire Commission for review pursuant to Section 35-1-82.53, Utah Code Annotated. The Commission has reviewed the file in the above entitled case and we are of the opinion that the Motion for Review should be denied and the Order of the Administrative Law Judge affirmed. In affirming, the Commission adopts the Findings of Fact and Conclusions of Law of the Administrative Law Judge.

IT IS THEREFORE ORDERED that the Order of the Administrative Law Judge dated March 22, 1985, shall be, and the same is hereby, affirmed and the Motion for Review shall be, and the same is hereby, denied.

Passed by the Industrial Commission of Utah, Salt Lake City, Utah, this 24th day of April, 1985.

ATTEST:

Linda J. Strasburg
Commission Secretary

Stephen M. Hadley
Chairman

Walter T. Axelgard
Commissioner

Lenice L. Nielsen
Commissioner

CERTIFICATE OF MAILING

I certify that on April 24th, 1985, a copy of the attached Denial of Motion for Review was mailed to the following persons at the following addresses, postage paid:

Arthur J. Barton, 305 North 400 West, Salina, UT 84654

Virginius Dabney, Atty., 412 Kearns, Bldg., SLC, UT 84101

K. L. McIff, Atty., P. O. Box 605, richfield, UT 84701

River Ranches, Aurora, UT 84620

THE INDUSTRIAL COMMISSION OF UTAH

By Wilma

CERTIFICATE OF SERVICE

I hereby certify that I mailed a true and correct copy of the foregoing document, postage prepaid, on this the 19th day of August, 1985, to the following:

David L. Wilkinson, Esq.
Attorney General of the State of Utah
Office of the Attorney General
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Salt Lake City, Utah 84114

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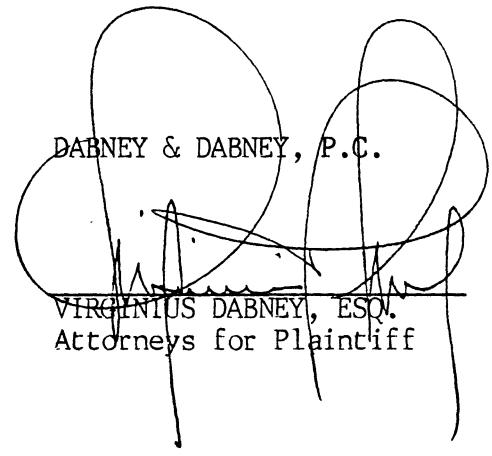

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